

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



AN INTERIM ORDER concerning the application by the City of El Paso for a new Type I municipal solid waste facility (MSW Permit No. 2284); TNRCC Docket No. 2001-1586-MSW.

On April 10, 2002, the Texas Natural Resource Conservation Commission (Commission) considered during its open meeting requests for hearing submitted by Lucy Falcon, Alicia Rivera, and Alianza Para el Desarrollo Comunitario concerning the application by the City of El Paso (El Paso or Applicant) for a new Type I municipal solid waste facility (MSW Permit No. 2284) in El Paso County, Texas. The requests for hearing were evaluated in accordance with the requirements of the applicable statutes and Commission rules, including 30 Texas Administrative Code Chapter 55, Subchapter F. The Commission also considered the responses to the hearing requests filed by the Executive Director, the Office of Public Interest Counsel, and El Paso; the reply to the responses filed by the hearing requesters; all timely public comment; and the Executive Director's Response to Public Comment.

After evaluation of all relevant filings and the answers to its questions during its meeting, the Commission determined that the following persons are affected persons as provided by applicable law: (1) Lucy Falcon; and (2) Alicia Rivera. The Commission determined that Alianza Para el Desarrollo Comunitario was not an affected person.

The Commission next determined whether the requests for hearing raised disputed issues of fact that were raised during the comment period and that raised issues which are relevant and material to its decision on the application. The Commission determined that the following ten issues raised by the requestors are disputed facts, raised during the comment period, and are relevant and material to its decision on the application and directed that they be referred to the State Office of Administrative Hearings ("SOAH") for a contested case hearing:

- (1) Does the compliance history of the Applicant warrant permit denial?;
- (2) Is the location of the proposed landfill compatible with existing land uses, including specifically whether visual screening is needed?;

- (3) Is the site geology appropriate for the proposed landfill?;
- (4) Does the Applicant adequately address groundwater contamination and runoff control?;
- (5) Is the Applicant's proposed Site Operating Plan adequate and sufficiently detailed, including specifically concerns about windblown waste, fire protection, ponded water, vector control, and landfill cover?;
- (6) Does the Applicant adequately address endangered species?;
- (7) Are the roads capable of serving the proposed landfill and the expanded waste streams?;
- (8) Does the Applicant adequately address the health risks of neighboring residents from exposure to windblown waste, air contaminants, water runoff, and vectors?;
- (9) Does the Applicant adequately address the control of methane gas?; and
- (10) Does the Applicant adequately address public nuisance issues which may affect neighboring residents?

The Commission also specified that the maximum duration of the contested case hearing shall be eight months from the first day of the preliminary hearing to the date the proposal for decision is issued by SOAH.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION that:

- (1) The following requesters are affected persons and their hearing requests are granted with regard to the issues described in Ordering Provision No. 2: a) Lucy Falcon; and b) Alicia Rivera;
- (2) The Chief Clerk shall refer to SOAH the following ten issues for a contested case hearing on the application:
 - (a) Does the compliance history of the Applicant warrant permit denial?;
 - (b) Is the location of the proposed landfill compatible with existing land uses, including specifically whether visual screening is needed?;
 - (c) Is the site geology appropriate for the proposed landfill?;
 - (d) Does the Applicant adequately address groundwater contamination and runoff control?;

- (e) Is the Applicant's proposed Site Operating Plan adequate and sufficiently detailed, including specifically concerns about windblown waste, fire protection, ponded water, vector control, and landfill cover?;
 - (f) Does the Applicant adequately address endangered species?;
 - (g) Are the roads capable of serving the proposed landfill and the expanded waste streams?;
 - (h) Does the Applicant adequately address the health risks of neighboring residents from exposure to windblown waste, air contaminants, water runoff, and vectors?;
 - (i) Does the Applicant adequately address the control of methane gas?; and
 - (j) Does the Applicant adequately address public nuisance issues which may affect neighboring residents?
- (3) All hearing requests not granted in Ordering Provision No. 1 and all issues not identified as being referred to SOAH in Ordering Provision No. 2 are hereby denied.
- (4) The maximum duration of the hearing is set at eight months from the first day of the preliminary hearing to the date the proposal for decision is issued by the State Office of Administrative Hearings.

Issue date: **APR 15 2002**

TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION



Robert J. Huston, Chairman